

TAXATION AND REVENUE: Interpretation of Sec. 1, Laws of Mo. 1933, p. 423

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Hon. M. Bingham,
Attorney at Law,
Galt, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of July 26, 1933 wherein you request an opinion as to the "Penalty Law", recently passed by the Legislature. Your letter is as follows:

"There are two points in connection with the 'Penalty Law' recently passed, which Big Medicine Drainage District No. 1, of Sullivan and Grundy Counties, Missouri, desire your opinion on.

1st. Does this law mean that where a party is sued for delinquent taxes for the year 1931, that before August 31st the delinquent can settle the case by paying the original tax and one-fourth of the penalties, interest, and costs?

2nd. Despite the wording of the section what effect does this law have on the judgment of delinquent taxes rendered prior to the passage of the law?

If the delinquent can settle with one-fourth of penalties, interest, and costs, would the plaintiff be liable for the remainder of court costs?"

The penalty section which you refer to is Section 1, Laws of Mo. 1933, p. 423, which is as follows:

"In payment of the taxes assessed against any person whose name appears upon the personal delinquent lists of any year or years prior to January 1, 1933, and in payment of the taxes assessed against any

real estate which appears upon the lists of delinquent and back taxes of any year or years prior to January 1, 1933, including delinquent taxes for the year 1932, the collectors of revenue of the counties and cities of this state are hereby empowered and directed to accept the original amount of said taxes as charged against any such person or real estate relieved of the penalties, interest and costs accrued upon the same; provided however, that such remission of penalties, interest and costs shall be in full if said taxes are paid not later than June 30, 1933; if paid after June 30, 1933, and not later than August 31st, 1933, then such remission shall be 75 per cent of such penalties, interest and costs; if paid after August 31st, 1933, and not later than October 31, 1933, such remission shall be 50 per cent of such penalties, interest and cost; if paid after October 31, 1933, and not later than December 31, 1933, then such remission shall be 25 per cent of such penalties, interest and costs: Provided, further, that after December 31, 1933, all penalties, interest and costs as aforesaid shall be restored and be in full force and effect for the full period of time since their accrual and as if this act had not been passed."

Referring to your first question, "Does this law mean that where a party is sued for delinquent taxes for the year 1931, that before August 31st, the delinquent can settle the case by paying the original tax and one-fourth the penalties, interest and costs?", in the very recent case of State of Missouri, at the relation of Roy McKittrick, Attorney General, vs. Frank W. Bair, Collector of Revenue of Jasper County, Missouri, No. 33115, which is as yet unprinted, Judge Hays speaking for the Court, said:

"****All questions necessary to be discussed having been determined, it seems advisable, before closing this opinion, to observe briefly the effect of the change in the law upon the back-tax suits that have been filed, or may be filed, subsequently to the date, April 13 of the current year, when this new law became effective. Owing to the alternative options granted the taxpayer, with periodically and increasingly reduced advantage to him in the avoidance of penalties, a

question of some difficulty is presented - pertinent to the effect upon suits pending during any part or all of the entire period covered by the Act. Concerning this matter it is our view (1) that none can proceed to final judgment before the expiration of the Act on January 1 next; (2) a taxpayer exercising the first option, may pay the original tax without more and all penalties are thereby discharged and his pending tax suit, if any, will be abated; (3) exercising the second option, the taxpayer, if suit be pending against him, must in addition to the original tax pay one-fourth of all penalties formerly chargeable, in full discharge of the whole and the suit will likewise abate; and (4) the same process and result will apply in a general way to the remaining options. We think this mode of procedure seems practical and just, and accomplishes the legislative purposes, as we have determined it."

Under this decision, if the delinquent will pay before August 31st, the amount of the taxes and one-fourth of all penalties, interests and costs, the suit shall be abated.

As to your second question, "Despite the wording of the section what effect does this law have on the judgment of delinquent taxes rendered prior to the passage of the law?", you will note that the opinion referred to above does not refer to a judgment which was rendered prior to the enactment of the penalty law and does not take care of that situation. We are therefore confronted with the question as to whether or not the penalty law could by its scope extend to the remission of penalties, costs, etc. and the taxpayer pay the amount of the original tax and the judgment abated. In the case in which the excerpts are quoted above there are additional portions which might throw light on this question. Judge Hays, speaking in the opinion, says:

****From the statute itself it is obvious that the attorney's right to fees does not accrue *pari passu* with the rendering of each act of service in a given case, but accrues as a whole after collection made or judgment rendered. ****

We would conclude from the above that the attorney's right to a fee in a delinquent tax suit would be vested as soon as judgment was obtained. Further in the opinion Judge Hays says:

****The contract entered into between the collector and his attorney, and approved by the county court, imposes no liability upon either the state, county or the collector. It only fixes the status of the attorney as to his right to compensation and the amount thereof when in the tax suit the liability therefor becomes fixed upon the taxpayer's property by the final judgment in the case. ****"

Again, the learned Judge says:

****Unlike the latter the former conditioned the remission, in instances where suits had been filed, upon the taxpayer's paying the costs together with attorney's fees. In construing the latter provision this court in *State ex rel v. Edwards*, 162 Mo. 660, held, that the Act simply gave the taxpayer an opportunity to avoid the costs and penalties by tendering the amount of the original tax before suit was brought and before the act expired by limitation. We think that under a proper construction of the statute assailed in the instant case the filing of suits for delinquent taxes and penalties is not prevented, but that penalties are remitted, in the manner provided in No. 80, upon proper tender of payment of the original taxes, without penalties, fees or costs, before judgment rendered (except as noted) ****"

It is therefore the opinion of this department that if the judgment was rendered prior to April 13, 1933, and is in regular form, the delinquent taxpayer would be liable for judgment, including the penalty and costs.

We are further guided in this conclusion by Article IV, Sec. 51 of the Constitution of Missouri, which is as follows:

"The General Assembly shall have no power to release or extinguish, or authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this State, or to any county or other municipal corporation therein."

As to your last question,

"If the delinquent can settle with one-fourth of penalties, interest, and costs, would the plaintiff be liable for the remainder of the Court costs?"

under the above decision and the plain wording of the statute, the delinquent, after paying the original tax plus one-fourth penalties, costs and interest, would under no circumstances be liable for the remaining three-fourths, nor would the plaintiff be liable for the three-fourths. Section 9969 R.S. Mo. 1929, omitting parts which are not pertinent, expressly states:

"****that in no case shall the state, county or city be liable for any such costs, nor shall the county court or state auditor allow any claim for any costs incurred by the provisions of this article."

We are therefore of the opinion that no part of the costs, interest or penalties could lawfully be assessed against the plaintiff.

Respectfully submitted,

OLLIVER W. NOLEN,
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APPROVED:

ROY McKITTRICK,
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